What's in a Label?

The Fight Over Mandatory Front-of-Package Labeling Requirements

National Food Policy Conference

Tuesday, September 12, 2023

About the International Food Information Council (IFIC)

Our Mission

To effectively communicate science-based information about health, nutrition, food safety and agriculture

Our Vision

We envision a global environment where credible science drives food policy and consumer choice.

Our Philosophy

We work to better the health and well-being of communities and to provide evidence-based information on health, nutrition and food safety for the public good.

**Visit IFIC.org to learn more about our organization*
**Visit Foodinsight.org for IFIC content*

International Food Information Council

Front of Package Labeling: Legal Framework

National Food Policy Conference
September 12, 2023

Sarah Sorscher, JD/MPH
Director of Regulatory Affairs, Center for Science in the Public Interest

CENTER FOR Science IN THE Public Interest

What Are the Key Attributes of Changes to Nutrition Labeling Being Considered?

Current US Labeling

- Government-led, mandatory back-of-package (Nutrition Facts)
- Industry-led, voluntary front-of-package labeling systems
- Challenges:
  - Understanding % daily value requires baseline nutrition literacy, use correlates with higher education, income
  - Voluntary systems have inconsistent uptake, often low noticeability, tend to be minimally interpretive or focus on positive attributes

Changes being considered

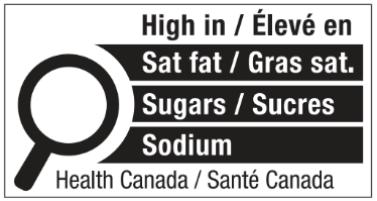
- Adding a mandatory disclosure on front of package, in addition to the NFP
- Highlighting key nutrients
- Including more interpretive elements
- These changes have been incorporated into labeling in Chile, Canada, Mexico, Ecuador, and other countries with mandatory front-of-package labeling

Nutrition Facts

3 servings per container
Serving size **3 pretzels (28g)**

	Per serving		Per container	
Calories	**110**		**330**	
		% DV*		% DV*
Total Fat	0.5g	**1%**	1.5g	**3%**
Saturated Fat	0g	**0%**	0g	**0%**
Trans Fat	0g		0g	
Cholesterol	0mg	**0%**	0mg	**0%**
Sodium	400mg	**17%**	1200mg	**52%**
Total Carb.	23g	**8%**	69g	**24%**
Dietary Fiber	2g	**7%**	6g	**21%**
Total Sugars	<1g		3g	
Incl. Added Sugars	0g	**0%**	0g	**0%**
Protein	3g		9g	
Vitamin D	0mcg	0%	0mcg	0%
Calcium	10mg	0%	30mg	2%
Iron	1.2mg	6%	3.6mg	18%
Potassium	90mg	0%	270mg	5%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.



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What are the legal requirements for the Food and Drug Administration to Require a Front-of-Package Disclosure?

- **Grant of authority by Congress**
  - FDA shall "require the required [nutrition] information to be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of the total daily diet." *Nutrition Labeling Education Act, Pub. L. No. 101-535, 104 Stat. 2353 (1990).*
  - FDA may use "descriptive terms such as 'high,' 'medium' and 'low' or...universal symbols to indicate desirable or undesirable levels of particular nutrients." H.R. Rep. No. 101-538, at 17 (1990).
- **Complies with Constitution**
  - First Amendment test for compelled disclosures, derived from *Zauderer v. Office of Disc. Counsel*: 1) factual and uncontroversial, 2) reasonably related to a legitimate government interest, and 3) not unjustified or unduly burdensome
  - Policies that fail *Zauderer* are analyzed under *Central Hudson*, which uses similar but stricter criteria.

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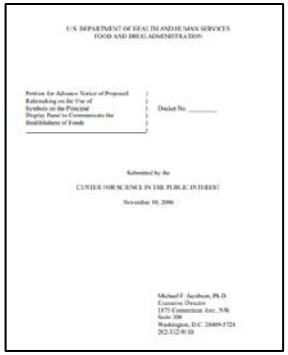
Sources:
Dietary Guidelines for Americans, 2020-2025. Available at DietaryGuidelines.gov.
https://www.ars.usda.gov/ARSUserFiles/80400530/pdf/1718/tables_1-56_2017-2018.pdf
https://www.ars.usda.gov/ARSUserFiles/80400530/pdf/FPED/tables_1-4_FPED_1718.pdf

Progress to Date on Front of Package Labeling

2006

1st petition from CSPI to FDA calling for a mandatory or voluntary FOPL



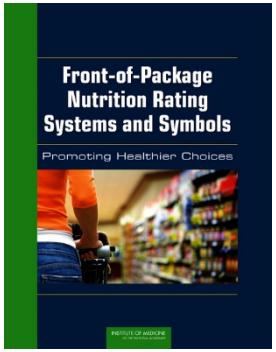
2007

FDA hosts public hearing on using symbols to communicate nutrition information

2010-2012

Institute of Medicine issues two-part report on FOPNL

Food industry develops voluntary system called “Facts Up Front”



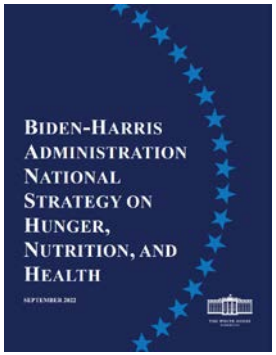
2021-2022

13 members of Congress co-sponsored the Food Labeling Modernization Act, directing FDA to mandate FOPNL

FY23 House appropriations bill urged FDA to explore mandatory FOPNL

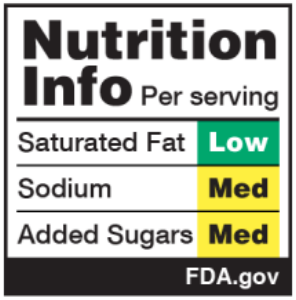
New petition from CSPI (with ASNNA and ASPHN) to FDA calling for mandatory FOPNL

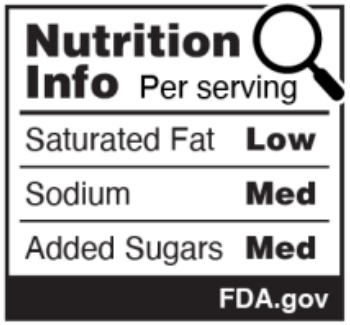
Biden-Harris administration commits to research, develop, and propose a FOPNL system to quickly and easily communicate nutrition information



Recent Work by FDA (2022-2023)

- Conducted focus groups
- Published updated literature review
- RCT is underway
- Planning to issue a proposed rule as early as December 2023





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What Comes Next?

- Results of FDA's consumer research
- Proposed rule with 30-90 day period for public comment.
- Final rule responding to comments on proposed rule
- Compliance date (can be staggered for small businesses)
- Stay involved! Sign up for email updates www.cspinet.org

Thank you!

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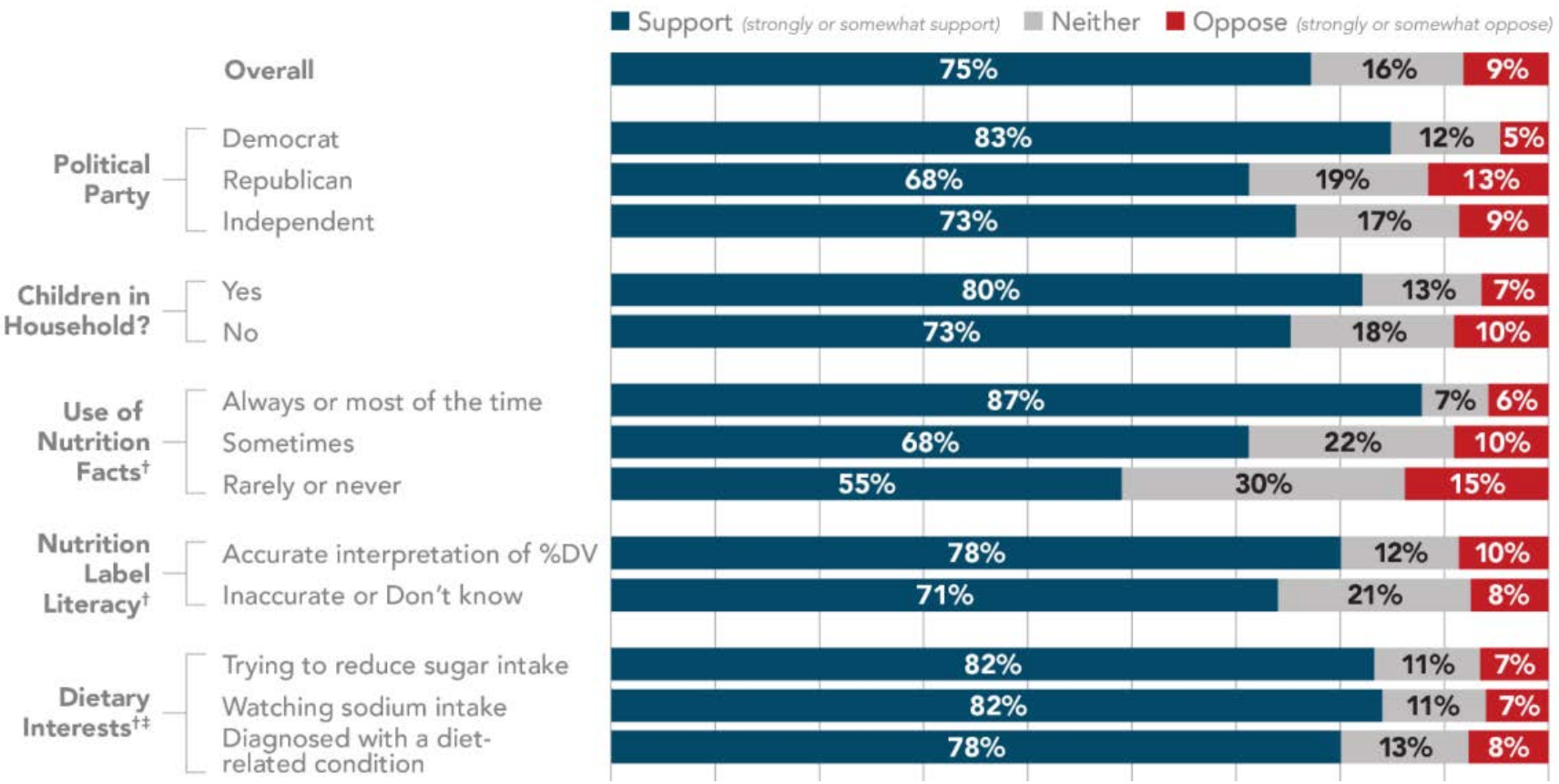
Photo: midori4/iStock

Widespread support for front-of-package labeling

Would you support or oppose a policy requiring labels like these on packaged, processed foods in the United States?

N=3,010 U.S. adults



Source: https://www.cspinet.org/resource/widespread-support-mandatory-front-package-labeling-united-states

Front of Package Labeling: Legal Considerations

National Food Policy Conference
September 12, 2023

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Potential Sources of Legal Authority

Section 403(q)

- label or labeling must bear "nutrition information" – including the amount of certain nutrients per serving
- FDA may require any such nutrition information "to be highlighted on the label or labeling by larger type, bold type, or contrasting color" if FDA "determines that such highlighting will assist consumers in maintaining healthy dietary practices"
- current NFL requirements based primarily on this authority

Section 403(f)

- required information must be sufficiently prominent: with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use
- this applies to all required information, not specific to nutrition information

Section 403(a)(1)

- label or labeling cannot be false or misleading in any particular

Potential First Amendment Framework

Zauderer applies if compelled speech is "purely factual and uncontroversial"

- FDA can compel speech if it
  - is reasonably related to government interest, and
  - the requirement is not "unjustified or unduly burdensome"

Central Hudson applies for other compelled speech

- FDA can compel speech if it
  - serves a substantial government interest,
  - directly advances the asserted governmental interest, and
  - is not more extensive than is necessary to serve the governmental interest

What Questions May FDA Need to Consider?

Legal Authority

- Can FDA require multiple disclosures under its authority in 403(q)? Why?
- Would FOP "assist consumers in maintaining healthy dietary practices"?
- If not, can FDA impose requirements under section 403(a)(1) – is FOP necessary to prevent labels from being misleading?

First Amendment

- Are FOP requirements "factual and uncontroversial"?
- If so, are requirements justified and not unduly burdensome?
- If not, would requirements directly advance FDA's interests? Are they more extensive than necessary to do so?

Would Arguments Impact Authority for Current Framework?

- NLEA directed FDA to establish requirements that would "enable the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet"
- FDA concluded that NFL framework accomplished this in establishing NFL in 1993 and updating in 2016
- If FOP requirements established to accomplish mandate in section 403(q), is there a basis for requiring NFL as currently required?

Front-of-package labels: the scientific evidence

Global Food Research Program
UNC-Chapel Hill

UNC CAROLINA POPULATION CENTER

Lindsey Smith Taillie, PhD, MPH
Global Food Research Program, University of North Carolina at Chapel Hill

Why do we need front-of-package labeling (FOPLs)?

- Limited use and understanding of back-of-pack information
- Nutrition claims are widespread, confusing, and sometimes misleading
- FOPLs provide quicker, more accessible information

Nutrition Facts

8 servings per container
Serving size **2/3 cup (55g)**

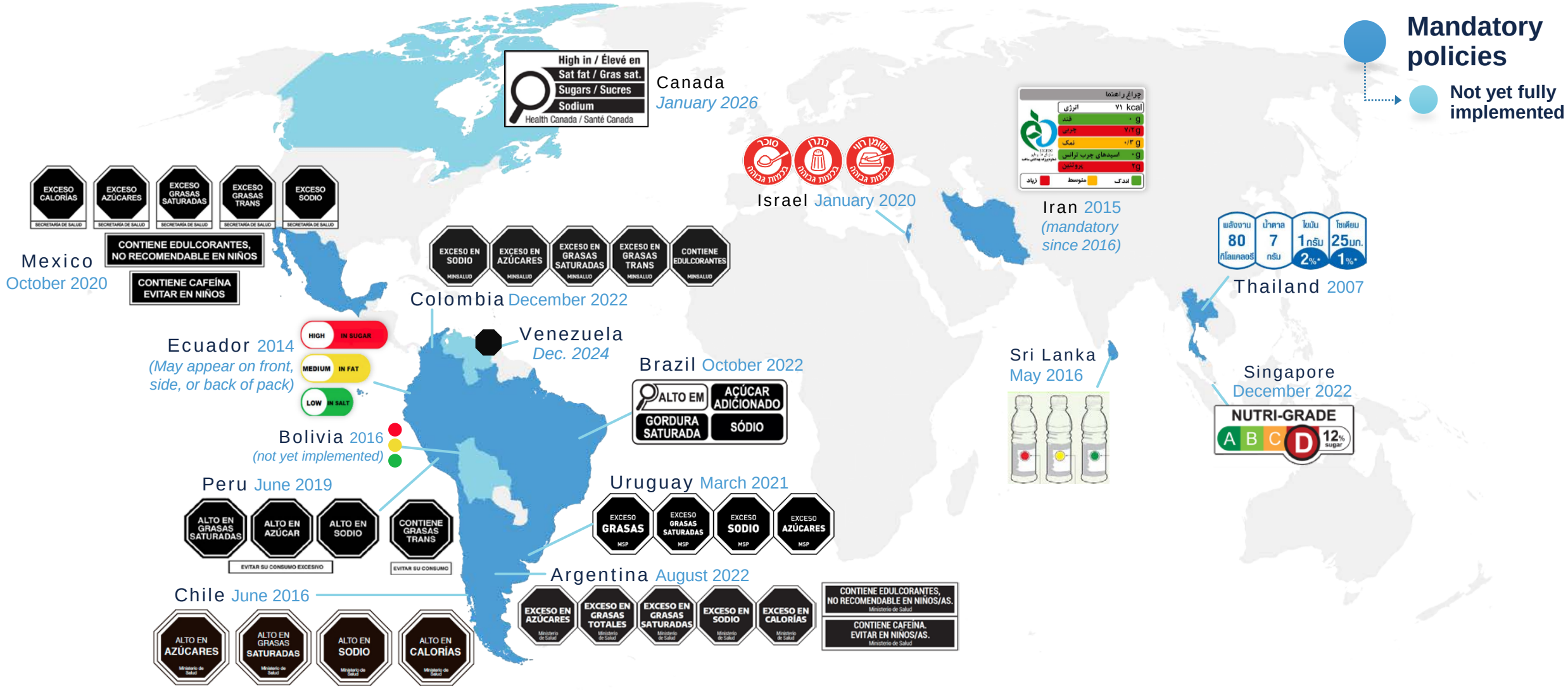
Amount per serving	
Calories	**230**
	% Daily Value*
Total Fat 8g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 160mg	**7%**
Total Carbohydrate 37g	**13%**
Dietary Fiber 4g	**14%**
Total Sugars 12g	
Includes 10g Added Sugars	**20%**
Protein 3g	
Vitamin D 2mcg	10%
Calcium 260mg	20%
Iron 8mg	45%
Potassium 240mg	6%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Roberto, Ng, Ganderats-Feuntes, Hammond Barquera, Jauregui, and Taillie, Ann. Rev. Nutr, 2021
Taillie, Ng, Xue, Busey, Harding, JAND 2017
Duffy, Hall, Dillman Carpentier, Musicus, Meyer, Rimm Taillie, JAND 2020
Hall, Lazard, Higgins, Blitstein, Duffy, Greenthal, Sorscher, Taillie AJCN 2022
Musicus, Hua, Moran, Duffy, Hall, Roberto, Dillman Carpentier, Sorscher, Wootan, Taillie, Rim 2022

Front-of-package labels: Mandatory policies

Global Food Research Program
UNC-Chapel Hill



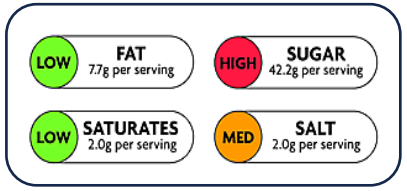
Front-of-package food labels

GUIDANCE / SIMPLICITY

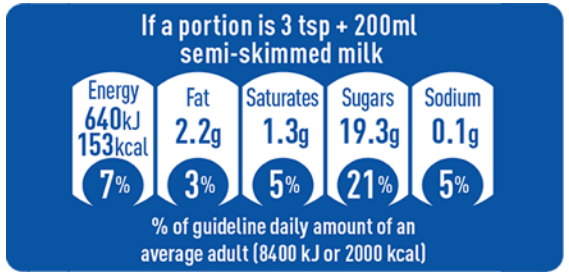
Binary guidance: + or -

Summary guidance

Complex guidance



Facts and references



INFORMATION / COMPLEXITY

GLOBAL FOOD RESEARCH PROGRAM

Experimental evidence on nutrient warnings

WARNING: High in added sugar

Attention → **Understanding** → **Risk perception** → **Behavior**

Taillie Higgins, Lazard, Miles, Blitstein, Hall, *Appetite* 2022
Hall et al, *Prev Med* 2021
Grummon & Hall *Plos Med* 2020

Taillie, Hall , Popkin, Ng, Murukutla, *Nutrients* 2020
Grummon et al *Prev Med* 2019
Hock et al *Prev Med Reports* 2021

More evidence on nutrient warnings in the US

- Most easily understood
- Works well for all levels of education and literacy
- High public support

Taillie Higgins, Lazard, Miles, Blitstein, Hall, *Appetite* 2022
Hall et al, *Prev Med* 2021
Grummon & Hall *Plos Med* 2020
Hammond et al 2017 International Food Policy Survey

Taillie, Hall , Popkin, Ng, Murukutla, *Nutrients* 2020
Nieto et al *IJBNPA* 2019
Grummon et al *Prev Med* 2019

Evidence on Nutrient Warnings: Chile

"High in" sugars, saturated fat, sodium, calories

Reduced content & purchases of nutrients of concern

FOOD SUPPLY

- ↓ **28-41%** Sugar
- ↓ **7-28%** Sodium

PURCHASES

- ↓ **20%** Sugar
- ↓ **14%** Sodium
- ↓ **9%** Saturated fat

Both children and adults understand the warnings

- More warnings= less healthy
- Well understood by low-educated parents
- Useful in categories that are confusing

Rebolledo et al, under review; Reyes et al *Plos Med* 2020; Correa et al *IJBNPA* 2019; Taillie et al *PLOS Med* 2020; Taillie et al *Lancet Plan Health* 2021; Taillie under review

Thank you!

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Towards Informed Label Policy Decisions:

All Consumers Are Not Created Equal

Hank Cardello

Executive Director of Leadership Solutions for Health + Prosperity

Business for Impact

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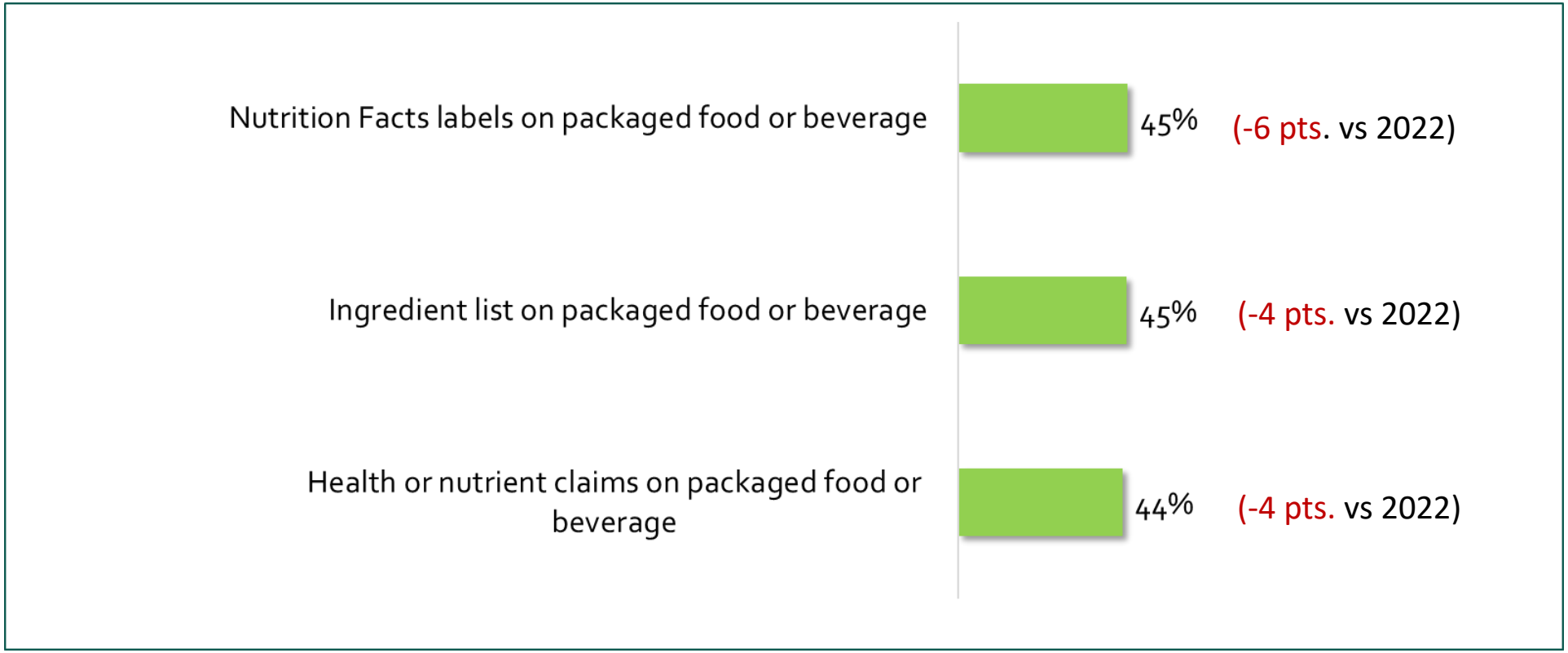
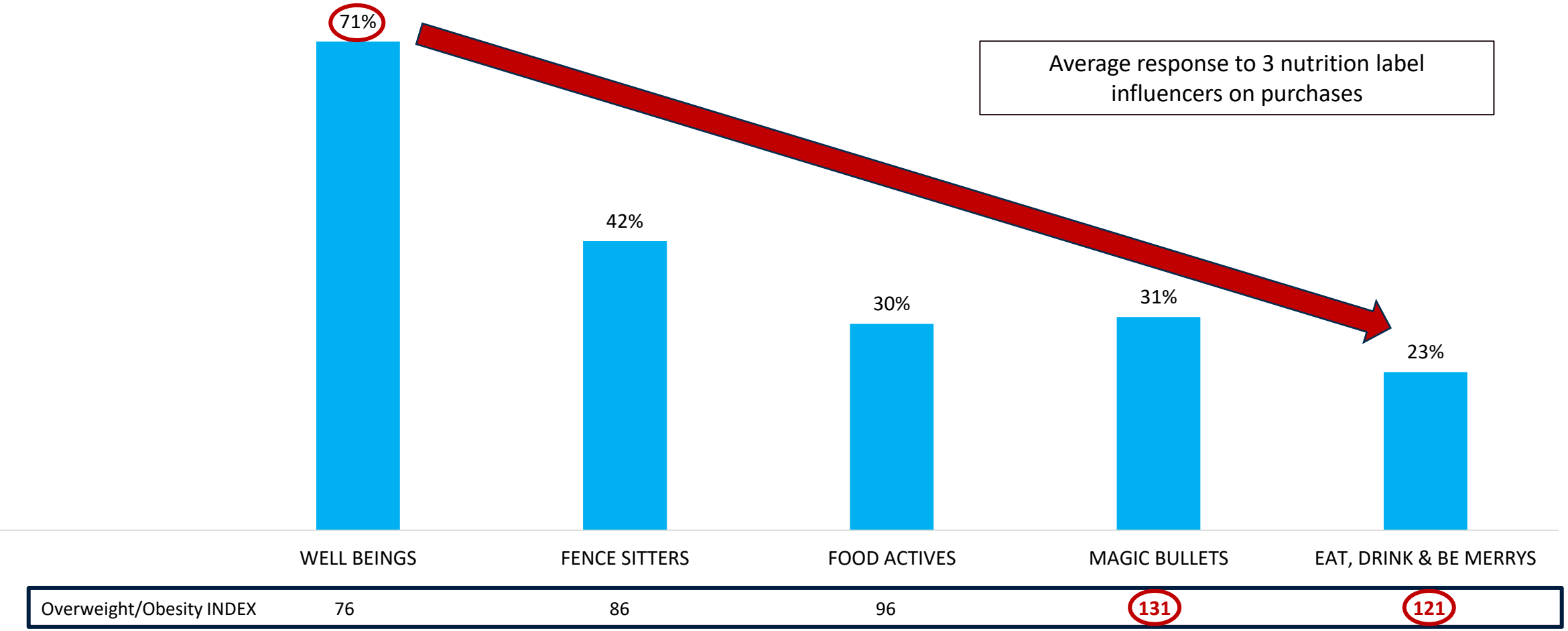
McDonough School of Business

Nutrition Information Influence on Purchases –
Almost Half of Consumers Look for It, but Fewer vs 2022

% GP indicating the following sources of information always/often influence their purchases

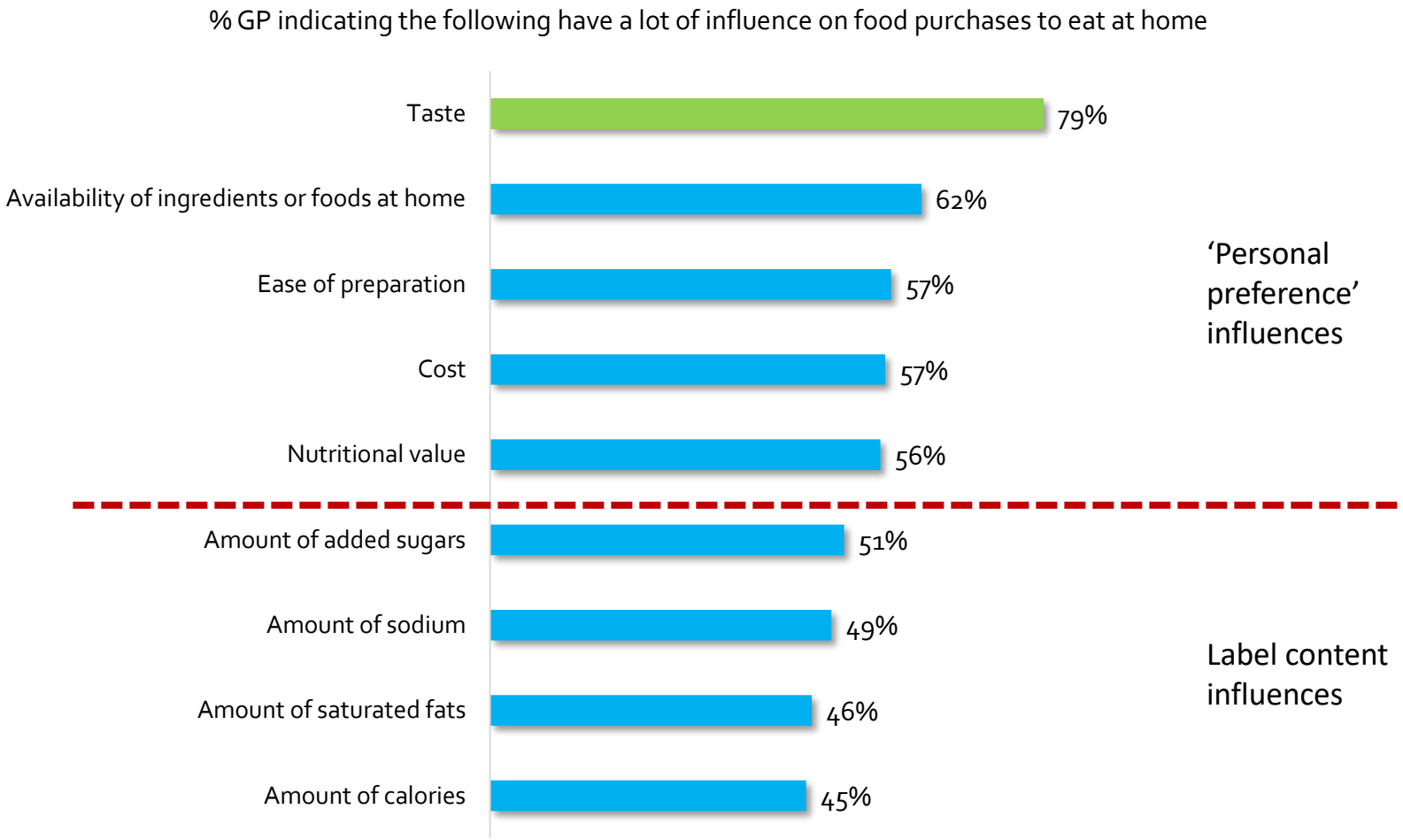


Segments with the Highest BMIs Read Nutrition Labels the Least



Overweight/Obesity INDEX	76	86	96	131	121

Always Fighting the Big “T” (= Taste)



Purchasers with Highest Rates of Overweight/Obesity Are Influenced the Least by Targeted Ingredients

% consumers indicating the following have a lot of influence on food purchases to eat at home

	TOTAL (GP)	WELL BEINGS	FENCE SITTERS	FOOD ACTIVES	MAGIC BULLETS	EAT, DRINK & BE MERRYS
Amount of added sugars	51%	72%	53%	46%	38%	23%
Amount of sodium	49%	63%	48%	48%	42%	32%
Amount of saturated fats	46%	63%	47%	37%	36%	30%
Amount of calories	45%	64%	49%	36%	32%	25%
Overweight/Obesity INDEX	100	76	86	96	131	121

All high sugar, fat and sodium products are NOT created equal

Purchase Index	Healthy Weight	Obesity	GAP vs. Healthy Weight
Regular soda	92.3	119.3*	+27.0
Packaged pastries/ Baked goods	94.0	115.2*	+21.2
Cookies	95.4	110.4*	+15.0
Potato & other chips/ pretzels	95.6	110.3*	+14.7
Packaged ice cream	96.8	110.2*	+13.4
Non-chocolate candy	102.3	109.2	+6.9
Chocolate candy	99.3	101.0	+1.7

INDEX of 100 = average of all consumers

* Statistically significant difference

Source: Why They Buy: Fighting Obesity Through Consumer Marketing Research, Hudson Institute, June 2018

Business for Impact

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